IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 09/411,171
Confirmation No. 7939
Filing Date..... .....October 1, 1999
Inventorship .....Khurshed Mazhar
Applicant .....Microsoft Corporation
Group Art Unit.....2173
Examiner .....Nguyen, Cao H.
Attorneys Docket No MS1-1583US
Title: WINDOWS RADIO TOOLBAR

To: The Honorable Commissioner for Patents
Mail Stop Appeal Brief - Patents
PO Box 1450
Alexandria, Virginia 22313-1450

From: Kasey C. Christie (Tel. 509-324-9256 x232; Fax 509-323-8979)
Customer No. 22801

APPEAL BRIEF OF APPELLANT

Pursuant to 37 C.F.R. §41.37, Applicant hereby submits an Appeal Brief for Patent Application 09/411,171, filed on October 1, 1999. Accordingly, Applicant appeals to the Board of Patent Appeals and Interferences seeking review of the Examiner's rejections.

TABLE OF CONTENTS

1) REAL PARTY IN INTEREST

The real party in interest is Microsoft Corporation, by way of assignment from Mazhar, who is the named inventive entity and is captioned in the present brief.

2) RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any other appeals, interferences, or judicial proceedings which will directly affect, be directly affected by, or otherwise have a bearing on the Board's decision to this pending appeal.

3) STATUS OF CLAIMS

Claims 22-42 are pending in this Application, and are set forth in the Appendix of Appeal Claims on page 32.

Claims 22-42 stand rejected, and are subject to this appeal.

No claims have been allowed.

Claims 1-21 have been previously cancelled without prejudice.

The history of the claims is as follows:

a) October 1, 1999: Claims 1-17 are originally filed.

b) September 25, 2002: Non-Final Office Action rejects claims 1, 14-15, and 17 under §102 as anticipated by RealPlayer; and 2-13 under §103 as unpatentable over RealPlayer and Applicant's Admitted Prior Art. Additionally, claim 10 is rejected under §112.

c) December 19, 2002: Response to Non-Final Office Action is filed with amendments to claims 2, and 10-13. New claims 18-21 are added. Editorial amendments are made to the specification to correct figure references, and add an omitted word "user."

d) February 27, 2003: Final Office Action rejects claims 1, 14-15, and 17 under §102 as anticipated by RealPlayer; and claims 2-13 under §103 as unpatentable over RealPlayer and "Applicant's Admitted Prior Art."

e) August 4, 2003: Response to Final Office Action filed canceling claims 1-

17. Declaration filed showing priority over "Applicant's Admitted Prior Art."

f) October 20, 2003: Non-Final Office Action rejects claims 18, and 20-21 under §102 as anticipated by RealPlayer, or in the alternative under §103 as obvious over RealPlayer as supported by "Screenshots" and "Press Release." Claim 19 is rejected under §103 as unpatentable over RealPlayer and "Applicant's Admitted Prior Art."

g) January 20, 2004: Response to Non-Final Office Action is filed with arguments, without amendments.

h) April 8, 2004: Final Office Action rejects claims 18, and 20-21 under §102 as anticipated by RealPlayer, or in the alternative under §103 as obvious over RealPlayer as supported by "Screenshots" and "Press Release." Claim 19 is rejected under §103 as unpatentable over RealPlayer and "Applicant's Admitted Prior Art." (Same as previous.)

i) June 30, 2004: Request for Reconsideration filed with arguments, without amendments.

j) August 24, 2004: Advisory Action rejects Request for Reconsideration, as not introducing new arguments.

k) September 8, 2004: RCE filed.

l) September 20, 2004: Preliminary Amendment filed canceling claims 18-21, and adding new claims 22-42.

m) April 4, 2005: Non-Final Office Action rejects claims 22-42 under §102 as anticipated by RealPlayer, or in the alternative under §103 as obvious over RealPlayer as supported by "Screenshots" and "Press Release."

n) August 8, 2005: Examiner interview is conducted, no agreement is reached.

o) September 2, 2005: Response to Non-Final Office Action is filed amending claims 22, 35, and 38.

p) November 25, 2005: Final Office Action rejects claims 22-42 under §102 as anticipated by RealPlayer, or in the alternative under §103 as obvious over RealPlayer as supported by "Screenshots" and "Press Release." (Same as previous.)

q) February 16, 2006: Pre-Appeal Brief is filed.

r) May 4, 2006: Notice of Panel Decision from Pre-Appeal Brief Review directs Applicant to proceed to Board of Patent Appeals and Interferences. Additionally, §102 rejections are dropped on claims 22-42.

4) STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Examiner's final rejection dated November 25, 2005.

5) SUMMARY OF THE CLAIMED SUBJECT MATTER

Following is a concise explanation of each independent claim involved in the Appeal (claims 22, 35, and 38), which includes specification references and exemplary drawing reference characters. As explained, the independent claims are not limited solely to the elements identified by the reference characters.

The subject matter is directed to a computer system that has at least one speaker for playing a first source of streaming media and has a display device for rendering a graphical user interface of a Web browser displaying a Web page in a browser pane. The graphical user interface includes a radio toolbar for displaying at least one button capable of controlling the first source of streaming media. The radio-toolbar buttons can include: a play button for instructing the Web browser to play the first source of streaming media, a mute button for instructing the Web browser to silence the first source of streaming media, and a volume slider for controlling the volume of the first source of streaming media played over the speaker. The radio toolbar buttons can also include: a radio-stations button allowing user selection of the first source of streaming media, and an information area displaying information about the first source of streaming media. Additionally, the graphical user interface can also include a menu bar, a standard-buttons toolbar, an address toolbar, horizontal or vertical explorer bars, a links toolbar and a status bar. *See Application, page 4, lines 10-24.*

In addition, the subject matter is directed to computer-readable media having computer-executable components including: a radio server component that plays a radio

source of streaming media; an interfacing component to communicate with the radio server component; and at least one radio client component that communicates through the interfacing component in order to provide instructions to the radio server component regarding the radio source of streaming media. *See Application, page 5, lines 1-8.*

Specifically:

Claim 22 describes a computer system (20) having a display device (47) for rendering a graphical user interface of a Web browser (300) displaying Web page content in a browser pane, and having at least one speaker (57) for playing streaming media. *See Application, pages 8-11 generally, and figures 1 and 3.* The graphical user interface of the Web browser (300) is described as comprising a radio toolbar (200) displaying radio-toolbar buttons for controlling the streaming media irrespective of the Web page content being browsed. *Application, Page 4, lines 1-6.* The radio-toolbar buttons are described as including: i) a play/stop button (202) enabled to toggle between play and stop to control, respectively, playing and stopping of available streaming media, and disabled when streaming media is unavailable (*Application, page 11, line 16 - page 12, line 8)*; ii) a mute button (204) for instructing the Web browser to silence streaming media, the mute button assuming an inactive state if the computer system cannot modify volume and an active state otherwise (*Application, page 12, lines 9-18)*; iii) a volume slider (206) for controlling the volume of streaming media played over the speaker, the volume slider assuming an inactive state if the computer system cannot modify volume and an active state otherwise (*Application, page12, line19 – page 13, line10)*; iv) a

radio-stations button (208) selectable to alter a source of streaming media by providing a drop-down list (500) that includes an "add station to favorites" entry and a list of recently used radio stations (*Application, page 13, line 11 – page 14, line 7, and Figure 5)*; and v) an information area (210) displaying a status text component (214) and a status icon component (212), the status text component presenting meta data information associated with a streaming media source, the status icon component presenting an Internet connection status regarding the streaming media source (*Application, page 14, line 8 – page 15, line 14, and figures 2E – 2G, figure 4).*

Additionally, claim 22 describes a cursor controllable by a user to select the radio-toolbar buttons, the cursor configured to highlight a radio-toolbar button while passing over that radio-toolbar button and to display a rollover tool tip describing a corresponding function of the highlighted radio-toolbar button. *See Application, pages 11-13, and figures 2A – 2E.*

Claim 35 describes a method of managing streaming media on a computer system having a speaker (57) for playing streaming media and a display device (47) for rendering a graphical user interface of a Web browser (300). *See Application, pages 8-11 generally, and figures 1 and 3.* The graphical user interface of the Web browser (300) is described as including a radio toolbar (200). *Application, pages 11, lines 12 – 15.* The method is described as comprising: launching an instance of the Web browser (S1200); creating a radio client (902 – 906) upon the launching of the Web browser (S1202);

determining if a radio server (900) is running (S1204); creating an instance of the radio server if the radio server was not previously running (S1206); establishing a shared memory (908) on the computer system between the radio client and the radio server to maintain a current playback-state of the radio server (S1208 – S1218); receiving a user selection of a recently used radio station from a drop-down list of the radio toolbar; retrieving a URL to the radio station from the shared memory; and requesting that the radio server stream content of the radio station (S1220 – S1224). *Application, page 17, line 14 – page 18, line 23, and figures 9 - 12.*

Claim 38 describes a method including a computer system (20) having a speaker (57) for playing streaming media and a display device (47) for rendering a graphical user interface of a Web browser (300), the graphical user interface of the Web browser including a radio toolbar having a play/stop button, a mute button, a volume slider, a radio-stations button, and an information status area. *See Application, pages 8-15 generally, and figures 1 and 3.* The method is described as comprising: disabling the play/stop button (202) on the radio toolbar if streaming media is not available (*Application, page 11, lines 18-20)*; if streaming media is available, enabling the play/stop button to toggle between play and stop upon user selection of the play/stop button, wherein toggling between play and stop causes playing and stopping, respectively, of available streaming media (*Application, page 16, line 8 – page 12, line 8)*; inactivating the mute button (204) if the computer system cannot modify streaming

media playback volume and activating the mute button otherwise *Application, page 12, lines 10 – 13)*; inactivating the volume slider (206) if the computer system cannot modify streaming media playback volume and activating the volume slider to control the streaming media playback volume otherwise *Application, page 12, lines 19 - 22)*; presenting a drop-down list (500) that includes an "add station to favorites" entry and a list of recently used radio stations upon user selection of the radio-stations button (208) (*Application, page 13, line 19 – page 14, line 7)*; and displaying in the information area (210), a status text component (214) and a status icon component (212), the status text component presenting meta data information associated with a streaming media source, the status icon component presenting an Internet connection status regarding the streaming media source (*Application, page 14, line 8 – page 15, line14, and figures 2E – 2G, figure 4)*.

6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Appellant thanks the Office for dropping the rejection of claims 22-42 under 35 U.S.C. §102(a), as executed in AP.PRE.DEC Notice of Panel Decision from Pre-Appeal Brief Review dated May 4, 2006.

2. Claims 29-42 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over RealPlayer G2™ © 1998 (hereinafter "RealPlayer") as supported by the screenshots (hereinafter "Screenshots", "Screenshot [number]", etc.) provided along with the original PTO-892 Notice of References cited mailed 9/25/02, and the press release "Realnetworks Ships Final Release of Realsystem G2, Next Generation Media Delivery System" (hereinafter "Press Release") provided with the PTO-892 Notice of References cited mailed 2/27/03. These rejections were presented in the Final Office Action dated November 25, 2005 (hereinafter "Office Action"). Appellant respectfully traverses the rejections.

3. Additionally, Claims 22-28 also stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over RealPlayer (in its form at the time of Applicant's invention) as supported by Screenshots and Press Release. These rejections were also presented in the Office Action, and will be addressed separately. Appellant respectfully traverses the rejections.

7) ARGUMENT

1. First Ground of Rejection:

Appellant thanks the Office for **dropping the rejection of claims 22-42 under 35 U.S.C. §102(a)**, as executed in AP.PRE.DEC Notice of Panel Decision from Pre-Appeal Brief Review dated May 4, 2006.

2. Second Ground of Rejection: The rejection under 35 U.S.C. §103(a) of claims 29-42 fails because the Office has failed to establish a *prima facie* case of obviousness.

Appellant respectfully submits that the Office has not established a *prima facie* case of obviousness. Specifically, the Office has failed to consider numerous elements or features set forth in claims 29-42.

The Office has the burden of setting forth a *prima facie* case of obviousness. *MPEP: 2142 Legal Concept of* Prima Facie *Obviousness.* Elements for establishing a *prima facie* case of obviousness are set forth as follows:

> To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an

> independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

MPEP: 2143.03 All Claim Limitations Must Be Taught or Suggested.

Page 5 of the Office Action states that "claims 29-42 are analyzed as previously discussed with respect to claims 22-28." This statement is the Office's ***sole basis*** for rejecting claims 29-42. However, the Office has failed to consider numerous elements or features in claims 29-42 that are not found in claims 22-28, and therefore have not been analyzed or examined by the Office. Appellant respectfully submits that claims 29-42 have been rejected without all claim elements or features being examined by the Office.

The group of claims (29-42) includes independent claims 35 and 38; dependent claims 36 and 37 which depend from independent claim 35; dependent claims 39-42 which depend from independent claim 38; and dependent claims 29-34 which depend from independent claim 22. These claims will be addressed beginning with the independent claims:

A) Independent Claim 35 For example, referring to independent claim 35, the Office has not addressed the following elements or features of this claim:

- "*launching* an instance of the Web browser,"
- "creating *a radio client upon the launching of the Web browser*...,"
- "establishing *a shared memory* on the computer system between the radio

client and the radio server to maintain a current playback-state of the radio server" and/or

- "retrieving a URL to the radio station from the *shared memory*."

Appellant respectfully submits that the Office failed to consider at least these elements or features of independent claim 35 when making a rejection of the claim.

B) Independent Claim 38 Referring to independent claim 38, the Office has not addressed the following elements or features of this claim:

- "*inactivating* the mute button if the computer system *cannot modify* streaming media playback volume and *activating* the mute button otherwise," and/or
- "*inactivating* the volume slider if the computer system *cannot modify* streaming media playback volume."

Appellant respectfully submits that the Office failed to consider at least these elements or features of independent claim 38 when making a rejection of the claim.

Regarding Claims 35 and 38: Appellant respectfully submits that the Office has failed to consider elements or features of independent claims 35 and 38 when making a rejection of the claims. The Office has not shown that all the claim limitations of independent claims 35 and 38 [are] taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580. The Office has also failed to "consider[] … [a]ll words in

a claim … in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d at 1385, 165 USPQ at 496.

Appellant respectfully submits that the Office has therefore failed to meet its burden of establishing a *prima facie* case of obviousness with respect to independent claims 35 and 38, and therefore rejection of these independent claims is improper. Appellant respectfully requests that the rejections be withdrawn.

C) **Dependent Claims 36, 37, and 39-42** Dependent claims 36 and 37 depend from independent claim 35; and dependent claims 39-42 depend from independent claim 38. As discussed above, independent claims 35 and 38 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.

Additionally, some or all of these claims may also be allowable for additional independent reasons.

D) **Dependent Claims 29-34** Dependent claims 29-34 depend from independent claim 22. Appellant respectfully submits that the Office has failed to consider numerous elements or features of claims 29-34 as they depend from independent claim 22, thus failing to establish that each and every element, in combination with claim 22, is taught or suggested by the references. The Office has therefore failed to meet its burden of establishing a *prima facie* case of obviousness with respect to dependent claims

29-34, and so rejection of these dependent claims is improper and should be withdrawn. Specifically (emphasis added):

i) **Claim 29** Nothing in the Office's comments addresses the subject matter "the radio-stations button being adjacent to the volume slider; and the information area being adjacent to the radio-stations button."

ii) **Claim 30** Nothing in the Office's comments addresses the subject matter "the graphical user interface further comprises at least one explorer bar for providing a display area adjacent to the browser pane."

iii) **Claim 31** Nothing in the Office's comments addresses the subject matter "the graphical user interface further comprises a menu bar for allowing user control of the *Web browser* ***and*** the *Web page.*"

iv) **Claim 32** Nothing in the Office's comments addresses the subject matter "the graphical user interface further comprises a navigation toolbar that allows user navigation of the *Web page.*"

v) **Claim 33** Nothing in the Office's comments addresses the subject matter "the graphical user interface further comprises an address bar identifying an address for the *Web page* being displayed by the *Web browser* in the browser pane."

vi) **Claim 34** Nothing in the Office's comments addresses the subject matter "the graphical user interface further comprises a status bar showing a current status for the *Web page.*"

Appellant respectfully submits that the Office failed to consider at least these elements or features of dependent claims 29-34 when making a rejection of the claims. Therefore, the Office has failed to meet its burden of establishing a *prima facie* case of obviousness with respect to dependent claims 29-34. Rejection of dependent claims 29-34 is improper and should be withdrawn.

3. Third Ground of Rejection: Claims 22-28 satisfy the requirements of 35 U.S.C. § 103 and are patentable over RealPlayer (at the time of Applicant's invention) as supported by the Screenshots and the Press Release.

Claims 22-28 are rejected under 35 U.S.C. §103(a) as obvious over RealPlayer G2™ © 1998 (hereinafter, RealPlayer) as supported by the screenshots (hereinafter "Screenshots", "Screenshot [number]", etc.) and the press release "RealNetworks Ships Final Release of RealSystem G2, Next Generation Media Delivery System" (hereinafter "Press Release"). For the following reasons, Appellant believes the rejection is improper.

A) Independent Claim 22

Appellant submits that independent claim 22 differs from the cited references either separately or in combination, on at least the following points excerpted from claim 22: (with emphasis added):

"... a display device for rendering a graphical user interface ***of a Web browser*** displaying Web page content in a browser pane, and having at least one speaker for playing streaming media, the graphical user interface ***of the Web browser*** comprising:

a) a radio toolbar displaying radio-toolbar buttons for controlling the streaming media ***irrespective of the Web page content*** being browsed..."

The Office equates the RealPlayer application, as supported by the Screenshots and the Press Release cited by reference, with "a graphical user interface ***of a Web browser...*** comprising: a radio toolbar displaying radio-toolbar buttons for controlling the streaming media ***irrespective of the Web page content*** being browsed..." as recited in this claim. Appellant respectfully disagrees.

Appellant submits that RealPlayer does not have all of the necessary capabilities of a web browser; that the Press Release appears to distinguish the RealPlayer application from a web browser; and that the viewing pane of the RealPlayer application is linked to media being played, and it is incapable of displaying a web page as described in the Application and as recited in independent claim 22.

i) The RealPlayer application does not have all of the necessary capabilities of a web browser.

In the Action, the Office states: "RealPlayer is a program that accesses data and files (audio and video files) from the World Wide Web. It reads and processes hyperlinks to get to the appropriate site, and is therefore a web browser." Because the RealPlayer application has a limited sub-set of the functions of a web browser, Appellant respectfully disagrees. The RealPlayer application (at the time of Applicant's invention) is missing many of the necessary functions of a web browser, and so Appellant submits that it is not a web browser as described in the Application, or recited in independent claim 22.

For example, unlike a web browser, the RealPlayer's access to the World Wide Web is limited to those data and files (audio and video files) that are capable of being played on the RealPlayer application. As a streaming media player, RealPlayer may only access and play certain audio and video media files, out of the total number of files available on the World Wide Web. Additionally, RealPlayer successfully reads and processes only those hyperlinks which lead to playable media files. If a user attempts to use RealPlayer to access a file that is supported by a web browser, but is not supported by RealPlayer, the user will receive an error message from the RealPlayer application.

In contrast, a web browser as described in the Application and recited in the claim is not similarly limited, and may access most available data and files on the World Wide Web. The web browser as described is capable of accessing audio and video media files,

and also has the capability of accessing many other types of files, and performing other complex functions. For example, it is possible to view a patent or to file an application on the USPTO web site using a web browser, but it is not possible with the RealPlayer application.

RealPlayer's lack of web browser functionality is supported by the "search" and "update" links that are included on the RealPlayer interface. *See Screenshots 1 and 2.* These links that may appear to give browsing functionality are traditional shortcuts, opening a separate application: the user's primary web browser to perform desired web browsing tasks.

Referring to Screenshot 1: the RealPlayer interface includes a search entry field at the bottom of the interface following the "excite®" logo, and also includes a number of "update" buttons in the viewing pane on the right. *See Screenshot 1.* These RealPlayer features are cited in the Office Action to show RealPlayer's ability to browse web content. Appellant respectfully disagrees.

The "search" function included with RealPlayer is intended to assist the user in finding media files to play or stream on the RealPlayer. *See Screenshot 1.* To use the "search" function, a user enters text in the search entry field, and clicks the "search" button. Clicking the "search" button opens a new application: **a web browser,** for example Microsoft® Internet Explorer, opened to the "excite®" search web page. The results of the search appear only in the separately opened web browser, not in the viewing pane of the RealPlayer. The viewing pane of the RealPlayer and the search field remain

unchanged. The separate web browser is needed to perform the desired web browsing tasks, in this case a web search for media files, since the RealPlayer is not capable of browsing for files itself.

The "update" function included with RealPlayer is intended to assist the user in upgrading the currently installed version of RealPlayer to the newest version, or to a premium version. *See Screenshot 1.* To use the "update" function, a user clicks on any of the links shown in the viewing pane on the right portion of the interface. The links include the text "Click here to update your player now" and "Find out what's new in RealPlayer 8" and the button which reads "UPGRADE NOW!" Clicking on any one of these links opens a new application: **a web browser**, for example Microsoft® Internet Explorer, opened to the RealPlayer web site. The viewing pane of the RealPlayer remains unchanged. The separate web browser is needed to perform the desired web browsing tasks, in this case browsing for upgrade information and possibly downloading or performing an online installation of upgrade files, since the RealPlayer is not capable of these web browsing tasks for itself.

The "search" function and "update" function may appear differently on various embodiments of the RealPlayer interface, however they work the same as described above. Referring to Screenshot 2: In this embodiment of RealPlayer, the "search" field follows the "snap.com" logo, and performs as described above, opening a new separate web browser to the "snap.com" search web page. The "update" link in this embodiment

includes the text "Connect to the internet, and click here to see what's new" and performs as described above, opening a new separate web browser to the RealPlayer web site.

It should be noted in all cases however, that since the links call a shortcut to the user's primary web browser, a web browser will only open if one is installed on the user's computer. If no web browser is installed on the user's computer, the "search" or "update" links will not function, as the RealPlayer does not have the ability to perform web browsing tasks in that manner. RealPlayer relies on the installation of a separate web browser to provide the functionality suggested by the links.

The RealPlayer application (at the time of Applicant's invention) does not have all of the necessary functions of a web browser. Therefore, RealPlayer does not disclose "a graphical user interface ***of a Web browser***" as recited in independent claim 22.

ii) The Press Release appears to distinguish the RealPlayer application from a web browser.

In the Action, the Office references the Press Release to combine with the RealPlayer and the Screenshots to show the obviousness of independent claim 22. The Office alleges that the Press Release combined with RealPlayer and the Screenshots shows "a graphical user interface ***of a Web browser....***" Appellant respectfully disagrees, since the Press Release appears to distinguish the RealPlayer application from a web browser.

The Press Release published by RealPlayer, announcing a new version of RealPlayer, distinguishes RealPlayer from a web browser by comparing itself to "all other streaming media players." The Press Release is categorizing the RealPlayer application as a streaming media player in the following quote from the Press Release (emphasis added): "[U]sage of RealPlayer grew by 105% while the combined usage of ***all other streaming media players*** declined by 17%." *See Press Release, page 3.* This categorization in the Press Release appears to distinguish RealPlayer from a web browser.

Further, the Press Release continues to appear to distinguish RealPlayer from a web browser by hailing RealPlayer's ability to "integrat[e] with consumers' Web browser of choice." It is less likely that one web browser would integrate with another web browser, but a streaming media player with limited browsing ability may do so. The Press Release uses language appearing to make a distinction between RealPlayer and a web browser with the following quote from the Press Release (emphasis added): "Leveraging tight ***integration with consumers' Web browser of choice***, users can instantly access and enjoy their search results." Not only does the Press Release appear to distinguish RealPlayer from a web browser, but it also appears to define the dependence that RealPlayer has on an independent web browser for desired web-based functionality.

In the above examples, the Press Release appears to distinguish the RealPlayer application from a web browser. Therefore, the Press Release combined with RealPlayer

and the Screenshots does not disclose "a graphical user interface ***of a Web browser***" as recited in independent claim 22.

iii) The Viewing Pane of the RealPlayer application is linked to media being played, and it is incapable of displaying a *Web Page*.

Referring to the following claim language of independent claim 22: "a radio toolbar displaying radio-toolbar buttons for controlling the streaming media ***irrespective of the Web page content*** being browsed..." In the Action, the Office contends that "It is not explicitly shown in the screenshots of RealPlayer, but it is implicitly implied that the radio toolbar of RealPlayer has at least one button for controlling the first source of streaming media irrespective of the web page content being browsed." *See Office Action.* Appellant respectfully disagrees.

In its argument, the Office refers to RealPlayer's video viewing pane as its tool for browsing a web page. The video viewing pane is shown in the right-half of Screenshot 1. *See Screenshot 1.* RealPlayer's video viewing pane is where video is displayed when the media being played by RealPlayer includes video. Appellant submits that the video viewing pane is linked to the media being played, and that it is incapable of displaying a web page.

If the media being played by RealPlayer includes video, the video is displayed in the video viewing pane. When a new source of media is selected, the content of the

video pane changes to reflect the new source of media; by showing video if the new source includes video, or by showing a static screen displaying the "Real" logo if there is no video associated with the selection. *See Screenshot 2.* This static screen is not web page content, but a default static screen displayed when no video content is available.

The Office continues: "It is apparent that the user may play streaming media, from the "Presets" menu for example, while the Web page content being browsed within [Screenshot 1] concerns the auto update feature of RealPlayer." This statement presents the Office's evidence of RealPlayer's ability to stream media irrespective of the Web page content being browsed. Appellant respectfully disagrees.

If a user selects one of the "Presets" from the menu, the media content played by RealPlayer will change. *See Screenshots 1-2.* As discussed above, if the new media selected includes video, then the display in the video viewing pane will also change, and the video content corresponding to the new selection will be displayed in the video viewing pane. If the new media selected does not include video, then the video viewing pane will continue to display the static screen with the "Real" logo. Generally, the static screen displayed in the viewing pane will also include an "update" link as discussed above. *See Screenshots 1-2.* This link is not web page content either, but a shortcut to a separate application, much like an icon on the desktop of a personal computer. If the user's computer has a web browser installed, then clicking on this shortcut will open a separate application: the installed web browser, to the RealPlayer web site. The view on the RealPlayer video viewing pane will not change, but will remain the same static screen

including the "Real" logo, and the update link as before. The user will browse the RealPlayer web site on their regular web browser.

The content of the RealPlayer video viewing pane is always associated with whatever media is being currently streamed by the player. Additionally, RealPlayer is incapable of displaying a Web Page. Therefore, it cannot be said that the RealPlayer media controls can control current streaming media *irrespective* of Web page content being browsed, within the context of the RealPlayer application alone.

Therefore, RealPlayer does not disclose "streaming media ***irrespective of the Web page content*** being browsed" as recited in independent claim 22.

RealPlayer does not have all of the necessary capabilities of a web browser; the Press Release appears to distinguish the RealPlayer application from a web browser; and the viewing pane of the RealPlayer application is linked to media being played, and it is incapable of displaying a web page as described in the Application and as recited in independent claim 22.

Appellant respectfully submits that RealPlayer, the Screenshots, or the Press Release, alone or in combination do not disclose, teach or suggest the recited features of independent claim 22. Therefore, Appellant submits that the §103 rejection is improper, and asks that the rejection be withdrawn.

B) Dependent Claims 23-28 Dependent claims 23-28 depend from independent claim 22. As discussed above, independent claim 22 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.

Additionally, some or all of these claims may also be allowable for additional independent reasons.

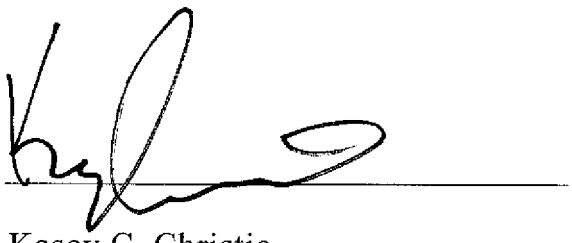
CONCLUSION

Appellant respectfully submits that the evidence of record and arguments based on this evidence show that the Office erred in rejecting the claims. In particular, specific grounds for rejection have been identified and discussed to show that the claims are allowable over the references cited.

Appellant respectfully requests that the Board reverse the Examiner's rejections for the specific grounds of rejection identified herein. Should any issue remain that prevents furtherance of this Appeal, the Board or Office is encouraged to contact the undersigned attorney to discuss the unresolved issue.

Respectfully submitted,

Dated: 7-24-07



Kasey C. Christie
Registration No. 40,559

LEE & HAYES PLLC
421 W. Riverside Avenue, Suite 500
Spokane, WA 99201
Telephone: (509) 324-9256 (Ext. 232)
Facsimile: (509) 323-8979

8) APPENDIX: CLAIMS ON APPEAL

Claims 1 - 21. (Canceled)

22. (Previously Presented) A computer system having a display device for rendering a graphical user interface of a Web browser displaying Web page content in a browser pane, and having at least one speaker for playing streaming media, the graphical user interface of the Web browser comprising:

a) a radio toolbar displaying radio-toolbar buttons for controlling the streaming media irrespective of the Web page content being browsed, the radio-toolbar buttons including:

i) a play/stop button enabled to toggle between play and stop to control, respectively, playing and stopping of available streaming media, and disabled when streaming media is unavailable;

ii) a mute button for instructing the Web browser to silence streaming media, the mute button assuming an inactive state if the computer system cannot modify volume and an active state otherwise;

iii) a volume slider for controlling the volume of streaming media played over the speaker, the volume slider assuming an inactive state if the computer system cannot modify volume and an active state otherwise;

iv) a radio-stations button selectable to alter a source of streaming media by

providing a drop-down list that includes an "add station to favorites" entry and a list of recently used radio stations; and

v) an information area displaying a status text component and a status icon component, the status text component presenting meta data information associated with a streaming media source, the status icon component presenting an Internet connection status regarding the streaming media source; and

b) a cursor controllable by a user to select the radio-toolbar buttons, the cursor configured to highlight a radio-toolbar button while passing over that radio-toolbar button and to display a rollover tool tip describing a corresponding function of the highlighted radio-toolbar button.

23. (Previously Presented) A computer system as recited in claim 22, wherein the rollover tool tip for the play/stop button is "play" when the play/stop button is toggled to stop, and "stop" when the play/stop button is toggled to play.

24. (Previously Presented) A computer system as recited in claim 22, wherein the rollover tool tip for the mute button is "mute" when the mute button is active.

25. (Previously Presented) A computer system as recited in claim 22, wherein the rollover tool tip for the volume slider is "volume control" when the volume

slider is active.

26. (Previously Presented) A computer system as recited in claim 22, wherein the rollover tool tip for the radio-stations button is "radio station" when the radio-stations button is active.

27. (Previously Presented) A computer system as recited in claim 22, wherein the graphical user interface further comprises an "add to favorites" dialog box initiated by a selection of the "add station to favorites" entry from the drop-down list of the radio-stations button, the "add to favorites" dialog box allowing a user to add a currently playing streaming media source to a favorites folder.

28. (Previously Presented) A computer system as recited in claim 22, wherein the status icon component presenting the Internet connection status comprises:

a default icon of a streaming media source if the streaming media source is currently playing;

a progressing circle while streaming media content is buffering; and

a blank space if there is no connection to a streaming media source.

29. (Previously Presented) A computer system as recited in claim 22, wherein the radio-toolbar buttons are adjacent to one another on the radio toolbar as

follows:

the mute button being adjacent to the play/stop button;

the volume slider being adjacent to the mute button;

the radio-stations button being adjacent to the volume slider; and

the information area being adjacent to the radio-stations button.

30. (Previously Presented) A computer system as recited in claim 22, wherein the graphical user interface further comprises at least one explorer bar for providing a display area adjacent to the browser pane, the at least one explorer bar capable of displaying information and allowing user interaction.

31. (Previously Presented) A computer system as recited in claim 22, wherein the graphical user interface further comprises a menu bar for allowing user control of the Web browser and the Web page, the menu bar including a plurality of menu entries selected from the group comprising:

File;

Edit;

View;

Favorites;

Tools; and

Help.

32. (Previously Presented) A computer system as recited in claim 22, wherein the graphical user interface further comprises a navigation toolbar that allows user navigation of the Web page, the navigation toolbar including a plurality of navigation-toolbar buttons selected from the group comprising:

Back;

Forward;

Stop;

Refresh;

Home;

Search;

History;

Print;

Mail; and

Edit.

33. (Previously Presented) A computer system as recited in claim 22, wherein the graphical user interface further comprises an address bar identifying an address for the Web page being displayed by the Web browser in the browser pane.

34. (Previously Presented) A computer system as recited in claim 22,

wherein the graphical user interface further comprises a status bar showing a current status for the Web page.

35. (Previously Presented) A method of managing streaming media on a computer system having a speaker for playing streaming media and a display device for rendering a graphical user interface of a Web browser, the graphical user interface of the Web browser including a radio toolbar, the method comprising:

launching an instance of the Web browser;

creating a radio client upon the launching of the Web browser;

determining if a radio server is running;

creating an instance of the radio server if the radio server was not previously running;

establishing a shared memory on the computer system between the radio client and the radio server to maintain a current playback-state of the radio server;

receiving a user selection of a recently used radio station from a drop-down list of the radio toolbar;

retrieving a URL to the radio station from the shared memory;

requesting that the radio server stream content of the radio station.

36. (Previously Presented) A method as recited in claim 35, further comprising:

receiving a user instruction through the radio toolbar regarding streaming content from the radio station;

forwarding the user instruction from the client to the server; and

executing the instruction at the server.

37. (Previously Presented) A method as recited in claim 35, wherein the user instruction is associated with a radio toolbar function selectable from the group comprising:

playing the streaming content;

stopping the streaming content;

muting the streaming content; and

changing the volume of the streaming content.

38. (Previously Presented) In a computer system having a speaker for playing streaming media and a display device for rendering a graphical user interface of a Web browser, the graphical user interface of the Web browser including a radio toolbar having a play/stop button, a mute button, a volume slider, a radio-stations button, and an information status area, a method comprising:

disabling the play/stop button on the radio toolbar if streaming media is not available;

if streaming media is available, enabling the play/stop button to toggle between

play and stop upon user selection of the play/stop button, wherein toggling between play and stop causes playing and stopping, respectively, of available streaming media;

inactivating the mute button if the computer system cannot modify streaming media playback volume and activating the mute button otherwise;

inactivating the volume slider if the computer system cannot modify streaming media playback volume and activating the volume slider to control the streaming media playback volume otherwise;

presenting a drop-down list that includes an "add station to favorites" entry and a list of recently used radio stations upon user selection of the radio-stations button; and

displaying in the information area, a status text component and a status icon component, the status text component presenting meta data information associated with a streaming media source, the status icon component presenting an Internet connection status regarding the streaming media source.

39. (Previously Presented) A method as recited in claim 38, wherein the graphical user interface includes a cursor controllable by a user to select radio-toolbar buttons, the method further comprising:

while the cursor passes over a radio-toolbar button,

highlighting that radio-toolbar button; and

displaying a rollover tool tip describing a corresponding function of the highlighted radio-toolbar button.

40. (Previously Presented) A method as recited in claim 39, wherein the displaying a rollover tool tip comprises:

displaying "play" when the play/stop button is toggled to stop;

displaying "stop" when the play/stop button is toggled to play;

displaying "mute" when the mute button is active

displaying "volume control" when the volume slider is active; and

displaying "radio station" when the radio-stations button is active.

41. (Previously Presented) A method as recited in claim 38, further comprising:

presenting an "add to favorites" dialog box in response to a user selection of the "add station to favorites" entry in the drop-down list; and

allowing the user to add a currently playing streaming media source to a favorites folder through the "add to favorites" dialog box.

42. (Previously Presented) A method as recited in claim 38, further comprising:

loading a radio station into the radio toolbar in response to a user selection from the list of recently used radio stations presented in the drop-down list.

9) APPENDIX: EVIDENCE

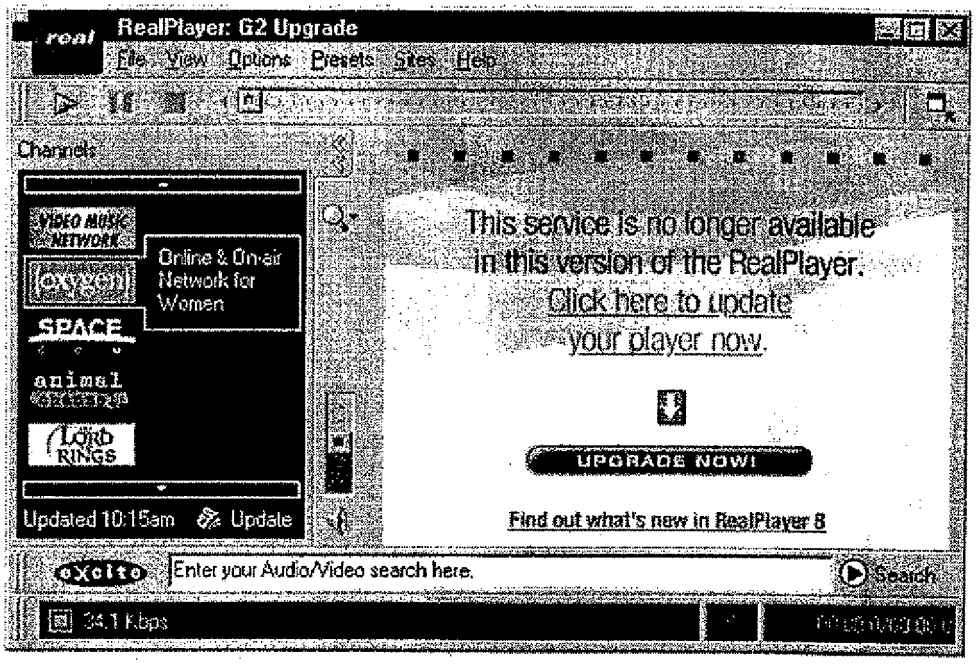
This Evidence Appendix contains copies of the following evidence which has been entered into the record by the Examiner as noted:

1. RealPlayer G2™ Version 6.0.3.128 ©1998, referred to in this Appeal as "**RealPlayer**", as supported by the screenshots, referred to in this Appeal as "**Screenshot 1**" provided by Examiner along with the original PTO-892 Notice of References Cited (lines "U-V") mailed September 25, 2002.

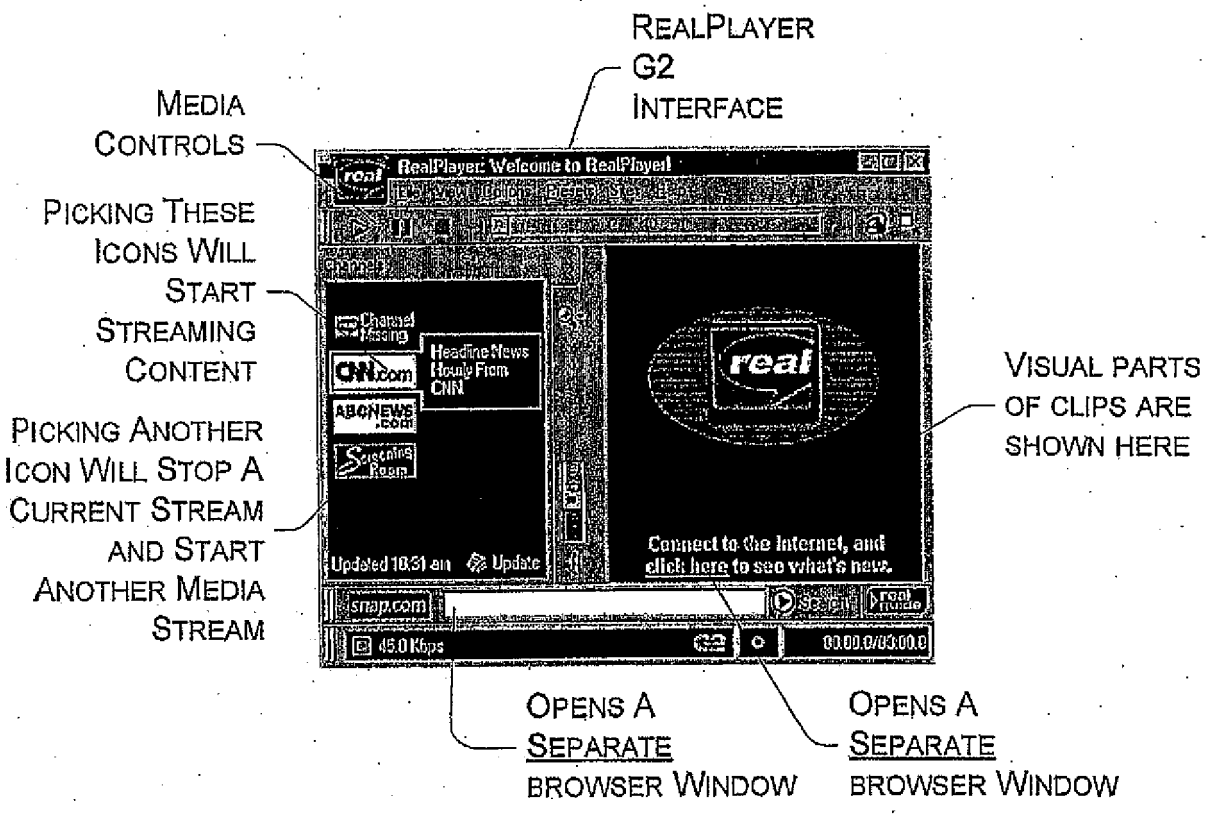
2. RealPlayer G2™ ©1998 screenshot, referred to in this Appeal as "**Screenshot 2**", provided by Applicant as "Appendix A" along with the Response to Office Action Dated April 4, 2005, filed with USPTO on September 2, 2005.

3. RealNetworks, Inc., "RealNetworks Ships Final Release of Realsystem G2, Next Generation Media Delivery System", 11/23/1998, referred to in this Appeal as "**Press Release**", provided by Examiner along with the PTO-892 Notice of References Cited (line "U") mailed February 27, 2003.

Number 1: "Screenshot 1"



Number 2: "Screenshot 2"



Number 3: "Press Release"

Company
Press Room
Press Releases
2002
2001
2000
1999
1998
1997
1996
1995

1998 PRESS RELEASES

REALNETWORKS SHIPS FINAL RELEASE OF REALSYSTEM G2, NEXT GENERATION MEDIA DELIVERY SYSTEM

New Audio and Video Search From Excite and Digital 3D Audio From QSound Labs are First Add-In Player Products for RealSystem G2's Open and Extensible Architecture

SEATTLE, November 23, 1998 -- RealNetworks, Inc. (Nasdaq: RNWK), the recognized leader in streaming media, today announced the final release of RealSystem™ G2, the next-generation media delivery system which provides broadcast quality, reliability and scalability for the Internet and corporate intranets. RealSystem G2, including RealServers™, RealPlayers® and RealProducers™, delivers a number of new features since the beta release designed to connect consumers to content and improve the quality of their audio experience. New search and 3D audio technology are the first RealPlayer Add-in products, leveraging the open and extensible architecture of RealSystem G2. RealNetworks today announced that Excite, Inc. has developed the first search technology for RealAudio® and RealVideo® which has been incorporated directly into RealPlayer G2 (see separate release), enabling consumers to quickly and easily search and connect to the broadest range of media content on the Web. RealNetworks also announced today that iQfx from QSound Labs will be available as an enhanced feature of either RealPlayer G2 or RealPlayer Plus™ G2 (see separate release), giving users access to digital 3D audio sound.

"The combination of RealSystem G2's powerful standards based media delivery architecture with its rapid industry and consumer adoption mark a pivotal point in the development of the Internet," said Len Jordan, senior vice president, Media Systems, RealNetworks, Inc. "RealSystem G2 resets the bar for media delivery on the Internet by providing consumers with superior audio and video quality as well as the ability to easily access the broadest range of media programming on the Internet."

"As the leading broadcaster on the Internet, we are excited to introduce RealSystem G2 and SureStream technology as a way to improve the sound and video quality for all of our RealNetworks customers," said Mark Cuban, president and co-founder, broadcast.com. "RealSystem G2 is a dramatic step forward and we plan on rolling it out throughout our site. For an example of what RealSystem G2 can do, we have created a showcase at http://www.broadcast.com/g2."

"By utilizing the standards-based SMIL authoring language, streaming media has taken a giant next step in increasing the media experience on the Web and moving the Internet towards a true broadcast medium," said Larry Gerbrandt, senior analyst with Paul Kagan Associates, Inc., a media research and consulting firm based in Carmel, CA. "RealPlayer G2 takes advantage of our search capabilities, giving people easy access to the most compelling online RealAudio and RealVideo content available," said George Bell, CEO, Excite, Inc. "RealPlayer G2 is truly a unique way to experience the sights and sounds of the Internet and we are pleased

Number 3: "Press Release" continued…

to be working with RealNetworks to bring this to consumers."

ABOUT REALSYSTEM G2
RealSystem G2 provides end-users with superior broadcast quality, reliability and scalability over the Internet and corporate intranets.

- **RealAudioG2, RealVideo G2 and SureStream** - RealVideo G2 includes Intel's Streaming Web Video technology, providing state-of-the-art production efficiencies for creating automatic multi-rate streaming video content and delivers significant video performance and quality improvements to consumers. RealAudio G2 delivers 80% improved frequency response and stereo and near-CD quality capabilities over connection speeds ranging from 28.8Kbps up to corporate **T-1** lines. New SureStream™ transport technology delivers reliable and continuous end-user playback under real-world network conditions. With SureStream, single media files now dynamically scale to deliver the highest quality RealAudio and RealVideo to users at all connection rates.
- **SMIL and New Media Types** - RealSystem G2 also supports Synchronized Multimedia Integration Language (SMIL), the W3C standard for Web-based multimedia, which enables rich multi-stream content to be delivered over typical modem connections with new data types such as RealPix™, RealText™ and Real G2 with Flash™, co-developed with Macromedia.
- **RealProducer and RealProducer Plus** - The new RealProducer and RealProducer Plus, also announced today (see separate release), allow anyone to create and deploy next generation streaming media Web pages, regardless of ability level. New wizards simplify the creation of Web pages with embedded streaming media and the uploading of the media and Web page files to the correct RealServer™ G2 directory or to an ISP personal page. The RealProducer Plus brings professional media production capabilities to a low priced tool.

  With more than 38 million registered users and more than 150,000 downloads daily, RealPlayer G2 is changing the way people interact with content on the Internet.
- **RealAudio and RealVideo Search** - RealPlayer G2 now incorporates the first RealAudio and RealVideo search capabilities developed by Excite into the RealPlayer enabling consumers to quickly and easily search hundreds of thousands of Web pages that feature RealAudio and RealVideo content. A search field within the user interface of RealPlayer G2 makes it simple to find RealAudio and RealVideo content on the Internet, from within the player. Leveraging tight integration with consumers' Web browser of choice, users can instantly access and enjoy their search results.
- **RealChannels** - There are more than 70 RealChannels™ built into RealPlayer G2, including major brands such as CNN, ESPN, and the Wall Street Journal. Average daily usage of the RealChannels increased 80% from August to September, and 150% since July. On average, there have been 300,000 session requests per day from RealChannels via the RealPlayer, and 500,000 online viewers requested RealChannels sessions on September 21, the day the Clinton Testimony was broadcast online.
- **AutoUpdate** - AutoUpdate enables RealPlayer G2 users to always be up-to-date with the latest player technology. AutoUpdate automatically notifies users when new updates to RealPlayer G2 are available for electronic download, simplifying installation since updates are now only one button away.

  RealSystem G2 is the first open, extensible standards-based streaming media system, allowing a wide range of major computing platform providers and ISV's to standardize on and create a new generation of rich media applications.
- **RTSP and SMIL** - RealSystem G2 is the first system built on industry standards: implementing RTSP, the Real Time Streaming Protocol, as the standard client/server protocol for streaming media, and SMIL as the standard integration and layout language for rich multi-stream

media presentations. RealSystem G2 also includes native support for most existing media file formats on the Web today including ASF, AVI, JPEG, MPEG, VIV, and WAV.

* **Industry is Choosing RealSystem G2** - During the beta period, more than twenty-five ISVs developed new applications and solutions that take advantage of RealSystem G2's open interfaces and advanced capabilities. Additionally, innovative new streaming data types like MIDI, VRML, and Real G2 with Flash™ animation have been integrated and can now be combined seamlessly into multimedia presentations that scale from dial-up to broadband connections.
* **Web-based Administration** - The RealServer™ G2 offers a completely Web-based administration and monitoring interface, which is extensible both through HTML and a server side API.
* **RealPlayer Add-Ins** - The new RealSystem G2 architecture is open and extensible, providing third parties, like Excite and iQfx, with an environment to develop software components that can be distributed and accessed through the RealPlayer user interface. Software developers interested in participating in the RealNetworks RPA Program should visit RealNetworks Web site at http://www.realnetworks.com/company/rpa/.

STREAMING MEDIA GROWTH
Media Metrix, Inc., the leader in Internet and digital media audience measurement, recently noted that from the first quarter of 1998 to the end of the third quarter 1998, usage of RealPlayer grew by 105% while the combined usage of all other streaming media players declined by 17%. In addition, RealPlayer has had the largest absolute growth of any consumer desktop application in 1998, according to Media Metrix.

Currently, more than 85% of all Web pages on the Internet using streaming media use industry leading RealAudio®, RealVideo® or Real G2 with Flash™ and more than 300,000 hours of live RealAudio and RealVideo programming are available each week. The RealPlayer, with more than 38 million registered users, is one of the most popular software applications used on the Internet.

ABOUT REALNETWORKS
RealNetworks, Inc. (Nasdaq: RNWK), based in Seattle, is the recognized leader in the streaming media market. It develops and markets software products and services designed to enable users of personal computers and other consumer electronic devices to send and receive audio, video and other multimedia services using the Web. RealNetworks can be found on the World Wide Web at www.real.com.

10) APPENDIX: RELATED PROCEEDINGS

None.